

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: February 9, 2017

UNPUBLISHED

* * * * *

SHANNON M. BARRY,

*

Petitioner,

*

v.

Chief Special Master Dorsey

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

Decision Acknowledging
Repayment of Additional
Compensation; Amending
Judgment.

Respondent.

*

* * * * *

Aaron Siri, Siri and Glimstad LLP, New York, New York, for petitioner.

Alexis Babcock, United States Department of Justice, Washington, D.C., for respondent.

DECISION ORDERING REPAYMENT OF EXCESS ATTORNEYS' FEES AND ORDERING AMENDMENT OF THE JUDGMENT¹

On January 19, 2012, Shannon Barry ("petitioner") filed a petition pursuant to the National Vaccine Injury Compensation Program. 42 U.S.C. §§ 300aa-1 to 34 (2012). Petitioner alleged that, as a result of receiving an influenza ("flu") vaccination on January 21, 2009, she suffered from Postural Orthostatic Tachycardia Syndrome ("POTS"). Petition at Preamble. On June 24, 2016, the undersigned issued a decision based on the parties' stipulation and awarded petitioner \$40,000.00 in compensation. Decision at 2.

On October 25, 2016, the undersigned issued a decision based on petitioner's motion for attorneys' fees and costs. Petitioner's attorneys were awarded compensation for attorneys' fees and costs in the following amounts: \$78,301.11 to T. Russell Price, Esq.; \$67,456.96 to Siri and Glimstad, LLP; and \$11,122.86 to Law Offices of Robert J. Krakow, P.C. Decision dated October 25, 2016 (ECF No. 94) at 15. Judgment entered on October 27, 2016.

¹ Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this ruling on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 note (2012)(Federal Management and Promotion of Electronic Government Services). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b).

On December 9, 2016, Mr. Krakow contacted the undersigned's law clerk via email to report that an error in the decision resulted in an overpayment to Mr. Krakow in the amount of \$742.89. The undersigned issued an Order directing the parties to file a joint motion to amend the judgment, which they did on January 6, 2017. See Joint Motion to Amend/Correct ("Joint Mot.") dated January 6, 2017 (ECF No. 99). The undersigned granted this motion and issued a new decision on January 12, 2017, directing Mr. Krakow to remit the overpayment to respondent and the Clerk of Court to issue a judgment for respondent in the amount of \$742.89. After that decision was issued, Mr. Krakow remitted the \$742.89 payment to respondent. Pet'rs' Ex. 65.

On February 7, 2017, petitioner filed a motion for reconsideration of the undersigned's January 12, 2017 decision, requesting that the court modify the part of the decision that directs the Clerk of Court to enter an additional judgment in favor of respondent. Petitioner argued that an "additional judgment in favor of respondent" was not necessary and could result in "possible adverse consequences" to petitioner. Id. at 3. Respondent did not object to petitioner's request. Id. at 1. Petitioner's Motion for Reconsideration ("Pet'r's Mot.") dated February 7, 2017 (ECF No. 102). Pursuant to Vaccine Rule 10(e) of the Rules of the Court of Federal Claims ("RCFC"), the undersigned granted petitioner's motion on February 8, 2017, and the January 12, 2017 decision was withdrawn. Order dated February 8, 2017 (ECF No. 103).

Accordingly, the undersigned directs the Clerk of Court to AMEND the October 27, 2016 judgment to reflect that Mr. Krakow has remitted the overpayment of \$742.89 to respondent and that the correct amounts of attorneys' fees and costs are as follows:

- (1) A lump sum of \$78,301.11 in the form of a check payable jointly to petitioner and T. Russell Price, Esq., for attorneys' fees and costs.**
- (2) A lump sum of \$67,456.96 in the form of a check payable jointly to petitioner and Siri and Glimstad, LLP, for attorneys' fees and costs.**
- (3) A lump sum of \$10,379.97 in the form of a check payable jointly to petitioner and Law Offices of Robert J. Krakow, P.C., for attorneys' fees and costs.**

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court is directed to enter judgment in accordance with this decision.²

IT IS SO ORDERED.

s/ Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.